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CIVIL AND POLITICAL RIGHTS, INCLUDING QUESTIONS OF: TORTURE AND DETENTION

Report of the Working Group on Arbitrary Detention

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Executive summary

The Working Group on Arbitrary Detention was established by resolution 1991/42 of the Commission on Human Rights, and entrusted with the investigation of instances of alleged arbitrary deprivation of liberty. The mandate of the Group was clarified and extended by Commission resolution 1997/50 to cover the issue of administrative custody of asylum-seekers and immigrants.

During the reporting period, the Working Group adopted 36 Opinions concerning 24 countries and 115 individuals. In 27 Opinions, it considered the deprivation of liberty to be arbitrary. In the same period, the Working Group registered and transmitted to Governments 30 communications.

Also during the reporting period, the Working Group transmitted a total of 101 urgent actions to 36 Governments and the Palestinian Authority, concerning a total of 579 individuals. Fifty-six of these urgent appeals were joint actions with other thematic or country mandates of the Commission on Human Rights. In 33 cases, the Governments concerned, or the sources of the allegations, informed the Working Group that they had taken measures to remedy the situation of the victims. During its twenty-sixth session, the Group also adopted a legal opinion in respect of the examination of communications and handling of urgent appeals concerning detention at the prison of Al-Khiam in southern Lebanon.

From 31 January to 12 February 1999, the Working Group visited Indonesia and East Timor. It held consultations with government authorities, the military, non-governmental organizations, academics and representatives of civil society in Jakarta and in East Timor; the Group was afforded unrestricted access to those detention facilities it had requested to visit. In its report on the mission, the Group recommended:

- To amnesty the political prisoners incarcerated or convicted under the old regime;

- To reinforce the independence of the police by separating it from the armed forces;

- To enhance the independence of the judiciary by placing it under the authority not of the Ministry of Justice but under that of the Supreme Court;

- To strengthen information and education efforts with a view to ensuring respect for and proper application of certain laws that provide sufficient procedural guarantees;

- To reform the Code of Criminal Procedure to include a legal obligation to present detained persons promptly and during the first days of detention to a prosecutor or a judge;

- To ensure the independence of activities of the National Commission for Human Rights;

- To abrogate all emergency laws and measures and replace them by a system which would apply in states of emergency and which would be compatible with article 4 of the International Covenant on Civil and Political Rights;

- To limit strictly the competence of military tribunals; and

- To adopt appropriate initiatives to institute an effective legal aid system.

The Working Group has begun to develop a follow-up procedure, designed to produce a continuous dialogue with those countries visited by the Group and in respect of which it recommended certain improvements of domestic legislation governing detention. Following its twenty-fifth session, the Governments of Viet Nam, Nepal and Bhutan were requested to provide follow-up information on the recommendations resulting from the Group's visit to those countries in 1994 and 1996. The Government of Bhutan provided the Working Group with detailed information on the measures it had taken to implement the Group's recommendations. The Governments of Nepal and Viet Nam had not yet provided the information solicited by the Group. The Group continued its dialogue with the Government of China in respect of the recommendations emanating from the Group's visit to China in October 1997.

At its twenty-sixth session, the Group adopted Deliberation No. 5 concerning the situation of immigrants and asylum-seekers. This develops the guidelines adopted by the Group in its last annual report on the situation of asylum-seekers and immigrants subjected to prolonged administrative detention.

In the conclusions and recommendations in the present annual report, the Group attaches particular importance, as it has done on previous occasions, to the following phenomena:

(a) The lack of protection for human rights defenders, who, together with journalists and politicians, are prime targets of repressive measures. The Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, adopted by the General Assembly of the United Nations on 9 December 1998, should be implemented by all States so as to demonstrate a real and sincere commitment to respect for human rights. Laws contrary to this Declaration insofar as they negate its precepts, add to the risks facing human rights defenders and are not consonant with the incontrovertible fact that the Declaration was adopted by consensus;

(b) The excesses of the so-called military justice, a regular cause of arbitrary detention and impunity for human rights violations, as demonstrated by cases brought before the Working Group, have prompted the Group, in its recommendations in previous reports, to underline the need for an international conference to analyse the subject and seek to limit the actual powers of the military justice system;

(c) The abuse of states of emergency, which leads the Working Group to recommend that States should apply them with moderation and strictly in accordance with article 4 of the International Covenant on Civil and Political Rights.

Introduction

1. The Working Group on Arbitrary Detention was established by the Commission on Human Rights in resolution 1991/42. Commission resolution 1997/50 spells out the revised mandate of the Group, which is to investigate cases of deprivation of liberty imposed arbitrarily, provided that no final decision has been taken in such cases by local courts in conformity with domestic law, with the standards set forth in the Universal Declaration of Human Rights and with the relevant international instruments accepted by the States concerned. Under this resolution, the Group is also given the mandate to examine issues related to the administrative custody of asylum-seekers and immigrants. The Working Group is composed of the following experts: Mr. R. Garretón (Chile), Mr. L. Joinet (France), Mr. L. Kama (Senegal), Mr. K. Sibal (India) and Mr. P. Uhl (Czech Republic and Slovakia). At its eighteenth session (May 1997), the Group amended its methods of work to the effect that at the end of each mandate the Working Group shall elect a Chairman and Vice-Chairman. Pursuant to this amendment, the Group elected Mr. Sibal as Chairman-Rapporteur and Mr. Joinet as Vice-Chairman. The Group has so far submitted eight reports to the Commission, covering the period 1991-1998 (E/CN.4/1992/20, E/CN.4/1993/24, E/CN.4/1994/27, E/CN.4/1995/31 and Add.1-4, E/CN.4/1996/40 and Add.1, E/CN.4/1997/4 and Add.1-3, E/CN.4/1998/44 and Add.1-2, and E/CN.4/1999/63 and Add.1-4). The Working Group's initial three-year mandate was first extended by the Commission in 1994, and in 1997 for another three years.

I. ACTIVITIES OF THE WORKING GROUP

2. The present report covers the period January to December 1999, during which the Working Group held its twenty-fourth, twenty-fifth and twenty-sixth sessions.

A. Handling of communications addressed to the Working Group

1. Communications transmitted to Governments and currently pending

3. During the period under review, the Working Group transmitted 30 communications concerning 116 new cases of alleged arbitrary detention (3 women and 113 men) involving the following countries (the number of cases and individuals concerned for each country is given in parenthesis): Belarus (1 case - 1 individual); Chile (1 - 1); China (5 - 8); Colombia (1 - 4); Djibouti (1 - 1); Ethiopia (1 - 3); Haiti (2 - 18); Japan (1 - 1); Lao People's Democratic Republic (1 - 25); Nigeria (1 - 12); Pakistan (2 - 2); Peru (5 - 5); Rwanda (1 - 1); Spain (1 - 1); Sudan (1 - 26); Turkey (2 - 2); United Kingdom of Great Britain and Northern Ireland (1 - 1); United States of America (1 - 1); and Uzbekistan (1 - 3).

4. Of the 19 Governments concerned, 10 provided information on all or some of the cases transmitted to them. These were: Belarus; Djibouti; China (reply to three communications); Colombia; Nigeria; Peru (reply to three communications); Spain; Sudan; Turkey (reply to one communication); United Kingdom.

5. Apart from the above-mentioned replies, certain Governments (Cameroon (No. 31/1998), Ethiopia (No. 18/1999), United Arab Emirates (No. 17/1998), Egypt (No. 10/1999 and No. 15/1999), Nigeria (No. 6/1999)) communicated information concerning cases on which the Group had already adopted Opinions (paragraphs 17-28 below).

6. The Governments of Chile, China (in respect of one case), Colombia, Ethiopia, Haiti, the Lao People's Democratic Republic, Pakistan, Peru (in respect of one case), Turkey (in respect of one case) and Uzbekistan did not provide the Working Group with any reply concerning cases submitted to them, though the 90-day deadline had expired. With regard to communications concerning China (one case), Haiti (one case), Japan, Peru (one case), Rwanda and the United States, the 90-day deadline had not yet expired when the present report was adopted.

7. A description of the cases transmitted and the contents of the Governments' replies will be found in the relevant Opinions adopted by the Working Group (E/CN.4/2000/4/Add.1).

8. Concerning the sources which reported alleged cases of arbitrary detention to the Working Group of the 30 individual cases submitted by the Working Group to Governments during the period under consideration, 13 were based on information communicated by local or regional non-governmental organizations, 11 on information provided by international non-governmental organizations enjoying consultative status with the Economic and Social Council, and 6 by private sources.

2. Opinions of the Working Group

9. During its three 1999 sessions, the Working Group adopted 36 Opinions concerning 115 persons in 24 countries. Some details of the Opinions adopted during those sessions appear in the table hereunder and the complete text of Opinions 1/1999 to 23/1999 are reproduced in addendum 1 to this report. The table further includes information about 13 Opinions adopted during the twenty-sixth session, details of which could not, for technical reasons, be included in an annex to this report.

10. Pursuant to its methods of work (E/CN.4/1998/44, annex I, para. 18), the Working Group, in addressing its Opinions to Governments, drew their attention to Commission resolution 1997/50 requesting them to take account of the Working Group's views and, where necessary, to take appropriate steps to remedy the situation of persons arbitrarily deprived of their liberty and to inform the Working Group of the steps they had taken. On the expiry of a three-week deadline the Opinions were transmitted to the source.

Opinions adopted during the twenty-fourth, twenty-fifth and twenty-sixth sessions of the Working Group

Opinion No.	Country	Government's reply	Person(s) concerned	Opinion
1/1999	China	Yes	Xue Deyun, Xiong Jinren	Detention arbitrary, category II
2/1999	China	Yes	Ngawang Choephel	Detention arbitrary, category II
3/1999	Myanmar	No	U Tun Win and 13 others	Detention arbitrary, category II
4/1999	Israel	No	Bilal Dakrub	Detention arbitrary, categories III and I
5/1999	Tunisia	Yes	Khemais Ksila	Detention arbitrary, category II
6/1999	Nigeria	No	Niran Malaolu	Detention arbitrary, category II
7/1999	India	Yes	Aleksander Klishin, Oleg Gaidash, Igor Moscvitin, Igor Timmerman and Yevgeny Antimenko	Detention not arbitrary
8/1999	Chad	No	Ngarléjy Gorongar	Victim released, case filed
9/1999	Russian Federation	No	Grigorii Pasko	Detention arbitrary, categories II and III
10/1999	Egypt	Yes	Neseem Abdel Malek	Detention arbitrary, category III
11/1999	Indonesia	No	Carel Tahiya, Neuhustan Parinussa, Louis Werinussa, John Rea, Poltja Anakota, Dominggus Pattiwaelapia	Detention arbitrary, category II
12/1999	Indonesia	Yes	Xanana Gusmao	Detention arbitrary, category III
13/1999	Viet Nam	No	Tran van Luong	Detention arbitrary, category II

Opinion No.	Country	Government's reply	Person(s) concerned	Opinion
14/1999	Palestine	No	Youssef and Ashaher al-Rai	Detention arbitrary, category III
15/1999	Egypt	No	M. Mubarak Ahmed	Detention arbitrary, category III
16/1999	China	Yes	Liu Nianchun	Victim allowed to emigrate, case filed
17/1999	China	Yes	Liu Xiaobo	Detention arbitrary, category II
18/1999	Ethiopia	No	Moti Biyya, Garuma Bekele, Tesfaye Deressa	Detention arbitrary, category II
19/1999	China	Yes	Li Hai	Detention arbitrary, category II
20/1999	Algeria	Yes	Rashid Mesli	Case kept pending, request for further information
21/1999	China	Yes	Wang Youcai	Detention arbitrary, category II
22/1999	Djibouti	Yes	Mohamed Aref	Victim released, case filed
23/1999	Equatorial Guinea	No	José Ló Oboño	Detention arbitrary, category III
24/1999	Haiti	No	Frantz Henry Jean Louis and Thomas Asabath	Detention arbitrary, categories I and III
25/1999	Colombia	No	Olga Rodas, Claudia Tamayo, Jorge Salazar and Jairo Bedoya	Case filed, victims released
26/1999	Spain	Yes	Mikel Egibar Mitxelena	Detention not arbitrary
27/1999	Uzbekistan	No	O. Nazarov, A. Salomov, A. Nasiriddinov	Detention arbitrary, category III
28/1999	United Kingdom	Yes	W. Agyegyam	Detention not arbitrary

Opinion No	Country	Government's reply	Person(s) concerned	Opinion
29/1999	Sudan	Yes (to previous urgent action)	Hilary Boma, Lino Sebit and 24 others*	Detention arbitrary, categories II and III
30/1999	Nigeria	No	Volodymyr Timchenko and 22 others*	Detention arbitrary, categories I and III
31/1999	United States	Yes	Severino Puentes Sosa	Detention not arbitrary
32/1999	United States	Yes	Mohamed Bousloub	Detention arbitrary, category III
33/1999	United States	Yes	César Manuel Guzman	Detention arbitrary, category III
34/1999	United States	Yes	Israel Sacerio Pérez	Detention arbitrary, category III
35/1999	Turkey	Yes	Abdullah Ocalan	Detention arbitrary, category III
36/1999	Turkey	Yes	Osman Murat Ülke	Detention arbitrary, category III

* The complete list of the persons concerned is available for consultation with the secretariat of the Working Group.

Note: Opinions 24/1999 to 36/1999, adopted during the twenty-sixth session, could not be reproduced in an annex to this report; they will be reproduced in an annex to the next annual report.

3. Handling of communications concerning detention at the Al-Khiam prison (southern Lebanon)

11. The Working Group has already given its views on the arbitrary nature (category III - Opinion No. 9/1998) of the deprivation of liberty of persons held at Al-Khiam. The question of whether this situation should be attributed to the Government of Lebanon, to the Government of Israel or to the South Lebanon Army (SLA) must be decided, however, for the Group to be able to deal effectively with the communications and urgent appeals before it. In the light of the documents and replies from Governments addressed to the Group on this matter, the respective positions may be summarized as follows:

(a) Lebanon: the Government of Lebanon, for its part, and especially insofar as the Al-Khiam prison is concerned, feels that it cannot be held accountable since it is incontrovertibly not able to exercise any control over this institution;

(b) Israel: in its replies, the Government does not contest the existence of the Al-Khiam detention centre - which it describes as a "prison" - but has declined all responsibility on many occasions in these terms: "Khiam has always been and remains solely under the control of the South Lebanon Army (SLA). All inquiries regarding Khiam should therefore be addressed to them." Recently, when replying to an urgent appeal, the Government maintained its position and added that the Working Group should henceforth refer directly to General Lahad, the commander of the SLA, and not to the mission of Israel;

(c) SLA: as this is not a State entity, the Working Group feels that it cannot be regarded as a valid interlocutor, within the framework of the Group's mandate, unless it has exercised the prerogatives of a State autonomously; in view of the developments outlined below, however, this appears not to be the case.

12. It thus remains to be determined whether or not Israel exercises a form of authority over the territory including the Al-Khiam detention centre that would entitle the Group to address the said communications and urgent appeals to the Government of Israel. It should be recalled that the part of Lebanese territory concerned, which is said to be an "occupied zone", was unilaterally defined by Israel as a "security zone" on its northern border after the war of 1982. The question is whether the Israeli Defense Forces (IDF) are still exercising permanent control over this zone, thereby making it possible for the SLA to be considered as acting on behalf of the IDF, and therefore of Israel, which would then bear responsibility in respect of Al-Khiam.

13. In reaching an opinion, the Group referred to the following documents:

(a) The Hague Convention concerning Laws and Customs of War on Land, of 18 October 1907, and more specifically the Regulations annexed to that Convention;

(b) The relevant provisions of the Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War, of 12 August 1949;

(c) The judgement of the International Court of Justice in the Nicaragua case and the recent sentencing judgement of the Appeals Chamber of the International Criminal Tribunal for the Former Yugoslavia (Prosecutor v. Dusko Tadic case).

As well as an affidavit from Brigadier-General Dan Halutz, former chief of IDF operations and responsible, in that capacity, for the activities pursued in the southern Lebanon security zone. This document is all the more important because it expressly indicates that the statement was made "on behalf of and with the consent of the respondent Minister of Defense" (affidavit, para. 1).

14. In the light of these texts, the Working Group examined the applicable criteria, under present international law, whereby a State may be held to be legally imputable for acts committed by individuals or groups of individuals who, while not officials of the State, are de facto acting on its behalf. Far from being rigid, these criteria are evolving, as attested since the beginning of the century by the following four decisive dates:

(a) First stage

1907: adoption on 1 October of The Hague Convention and the Regulations annexed thereto, whose scope is limited on account of being circumscribed, at the time, to the front zone (J.P. Pictet, Commentary IV to the Geneva Convention, ed. ICRC, 1956, p. 7). Nevertheless, the following criteria had already been adopted. According to article 42 of the Regulations:

> "Territory is considered occupied when it is actually placed under the authority of the hostile army";
>
> "The occupation extends only to the territory where such authority has been established and can be exercised";
>
> It therefore follows that the occupation is assimilated to a de facto situation, since the Regulations cite the hypothetical situation in which a hostile army occupies a foreign territory and can exercise the authority it has established therein.

The Government does not deny that The Hague Convention and Regulations are directly applicable under Israeli law (affidavit, para. 14), but it believes that one of the essential conditions has not been fulfilled, since no Israeli authority has been or is being established in the zone. Is this restrictive interpretation still appropriate given the developments in international law which took place with the entry into force of the "law of Geneva"?

(b) Second stage

1949: adoption on 12 August of the Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War, which elaborates upon and clarifies the principles set forth in 1907. According to this instrument, the status of persons deprived of liberty in conditions such as those obtaining at Al-Khiam is governed more especially by the provisions of articles 78 to 135, which limit the right of the occupying Power to take preventive security measures, in the form of detention, against protected persons not being prosecuted in the courts, and which define in detail the conditions of detention. Israel, it should be noted, is a party to the Fourth Geneva Convention.

(c) Third stage

1987: judgement of the International Court of Justice in the Nicaragua case: the issue was whether a foreign State, in this case the United States (on the grounds that it had been financing, organizing, equipping, training and helping to plan the operations of military or paramilitary groups called "Contras"), was responsible for acts contrary to human rights and humanitarian law committed by the "Contras". The Court refused to take the view that responsibility was necessarily to be imputed to the United States for all the acts committed by the "Contras", but found that it was responsible for its own conduct in relation to those acts (financing, control, guidance, etc.).

(d) Fourth stage

July 1999 judgement of the Appeals Chamber of the International Criminal Tribunal for the Former Yugoslavia. The issue was whether, for purposes of characterizing the conflict as being of an international or a non-international nature, the Bosnian Serb Forces had been dependent upon and under the control of the Army of the Federal Republic of Yugoslavia. The Tribunal, moving further in the direction taken since 1907, relaxed the requirement that specific instructions must be given, considering that it was enough to show "that this Army (FRY) exercised overall control over the Bosnian Serb Forces [...] Such control manifested itself not only in financial, logistical and other assistance and support, but also, and more importantly, in terms of participation in the general direction, coordination and supervision of the activities and operations of the [Bosnian Serb Forces]"

15. These, finally, are the criteria endorsed by international law in the matter. Does the status of Al-Khiam fall within these criteria? In other words, while it is not and cannot be denied that the Al-Khiam centre is administered by the SLA (affidavit, para. 48), it must nevertheless be decided, in the light of the above criteria, whether the SLA, as administrator, is acting on behalf of the IDF and hence of Israel.

16. The Government's argument rests on a restrictive interpretation of article 42 of the 1907 Convention. In the terms of this article, according to the Government, a territory is considered to be under belligerent occupation when it is actually under military authority. Two conditions must be fulfilled: first, that the authority of a military government has been established (affidavit, para. 15-a) and, second, that the said authority can be implemented (affidavit, para. 15-b). These two requirements mean that the territory must be "practically subject to the absolute control of the foreign army" (affidavit, para. 15 fine). The Government contends that while this was indeed the case between 1982 and 1985 during the war in Lebanon, it is no longer so today. In 1985, the Government decided to withdraw its troops gradually and redeploy the IDF to the north, along the Israeli-Lebanese border (affidavit, paras. 17-18). Accordingly, the nature of Israel's presence in the zone is "completely different [from that] maintained up to 1995 in Judea, Samaria or Gaza, ... as part of implementing effective control of the territory" (affidavit, para. 23).

17. The question to be asked now is whether, in view of the information that has just been analysed, the criteria endorsed by international law at its most recent stage of development are applicable here. This appears to be the case, in the light of the following information extracted from the above-mentioned affidavit:

(a) Financial assistance: "The State of Israel assists the SLA, among other ways, through financing weapons and maintenance" (affidavit, para. 40). "It was decided to cease the direct payment of salaries to members of the SLA who serve in Al-Khiam, and that will be done starting from the next salary" (affidavit, para. 54),

(b) Logistical assistance

- About the by-pass roads that the IDF built: "They were built [...] to enable military forces to move without entering [villages] due to the danger that is inherent in driving within the villages" (affidavit, para. 27).

- "In addition, certain detainees under interrogation are examined by means of polygraphs by the Israeli side in the framework of the security cooperation between the parties" (affidavit, para. 52).

(c) Other assistance and support

- Training: "Sometimes, Israel carries out professional training for SLA soldiers, such as in the field of navigation" (affidavit, para. 40).

(d) Cooperation: "In the framework of the cooperation between the State of Israel and the SLA [...], at Israel's request, [SLA] stopped the Red Cross visits and family visits at the facility during the period in which Hizbollah held the body of Itamar Iliya (RIP)" (affidavit, para. 45).

- "The release of detainees from the facility was done in the framework of cooperation between the parties" (affidavit, para. 49).

- "There is a connection between the general security service [GSS - Shin Bet] and the SLA as far is concerned the gathering of intelligence and interrogations [...], however, they do not participate in the frontal interrogation of detainees" (affidavit, para. 51).

- "GSS personnel hold meetings several times annually with SLA interrogators at the Al-Khiam prison (three visits in the last six months)" (affidavit, para. 51).

- "Information from the interrogations at Al-Khiam is transferred by the SLA to Israeli security forces" (affidavit, para. 52).

(e) Coordination

- "The IDF and the SLA coordinate their routine activity in the security zone [...], each of which has a separate command headquarter" (affidavit, para. 41).

- "No one contests that the IDF and the SLA coordinate their military activity, since both forces are fighting the same enemy, and that the IDF has influence over SLA, however, the SLA also has its own judgement concerning its military activities" (affidavit, para. 28).

- Military presence: "The IDF maintains a permanent presence in a very small number of military outposts in the security zone" (affidavit, para. 22).

18. In the light of the foregoing, the Working Group considers that it is justified in addressing the communications and urgent appeals concerning detention at Al-Khiam to the Israeli Government, inasmuch as it has been sufficiently demonstrated that the SLA is acting on behalf of the IDF.

4. Government reactions to Opinions

19. The Working Group received information from several Governments following the transmittal of Opinions to them. The Governments concerned were (the Opinion to which the information refers is given in parenthesis): Cameroon (No. 31/1998), United Arab Emirates (No. 17/1998), Turkey (No. 20/1998), China (No. 30/1998), Nigeria (No. 6/1999), Egypt (No. 10/1999 and No. 15/1999), and Ethiopia (No. 18/1999).

20. The above Governments responded to, contested or challenged the conclusions reached by the Group. The Government of Cameroon affirms, in respect of Opinion No. 31/1998, that the judicial procedures against the journalist Pius Njawé observed procedural guarantees. Mr. Njawé was not convicted for having expressed an opinion, but, under article 113 of the Criminal Code, for spreading false news. Article 113 is based on the dissemination of "facts" which are uncorroborated.

21. According to the Government, Mr. Njawé violated an important duty of journalists by spreading false news. The Government invokes article 3 of the Munich Charter on the Rights and Duties of Journalists of 25 November 1971, which enjoins journalists to publish only information the origin of which is known or to accompany the publication of such information with appropriate qualifiers. By using an affirmative style and invoking reliable sources concerning information that was false, Mr. Njawé did not manifest an opinion: he simply misled his readers.

22. The Government of the United Arab Emirates challenges Opinion No. 17/1998 and reaffirms that proceedings in the case against John Atkinson were compatible with international standards.

(a) On 13 December 1998, the Dubai Criminal Court convicted the defendant on criminal charges and sentenced him to six years' imprisonment and a heavy fine. The Government notes that throughout the proceedings, Mr. Atkinson was present and represented by a lawyer of his choosing;

(b) The defendant appealed the judgement, the public prosecutor also appealed, asking for the financial award to the Government to be increased. On 28 February 1999, the Dubai Court of Appeal upheld the judgement;

(c) On 24 March 1999, the defendant further appealed to the Court of Cassation. On 1 May 1999, the Court of Cassation upheld the judgement of the Court of Appeal.

With this, the Government notes, legal remedies are exhausted.

23. The Government of Turkey, in reply to Opinion No. 20/1998, notes that the case of the individuals identified in the Opinion were referred back to the State Security Court in Ankara after the Court of Appeal quashed the decision of the court of first instance. In its second verdict of 9 November 1998, the State Security Court:

(a) Found three defendants guilty of membership in illegal and terrorist organizations but reduced their sentences;

(b) Sentenced five defendants for membership in illegal and terrorist organizations and for having participated in illegal activities involving the use of explosives;

(c) Found one defendant guilty of propaganda for a terrorist organization.

The Government adds that the decision of 9 November 1998 was in turn appealed, and that the case is once again before the Court of Appeal for consideration.

24. The Government of China challenges Opinion No. 30/1998 (Zhou Guoqiang). It recalls that the re-education through labour system was created in the light of the actual conditions obtaining in China. Its aim is to help offenders who are not regarded as being criminally liable to mend their ways. In this context, the National People's Assembly had approved laws with provisions governing the nature, guiding principles and aim of re-education through labour, and how to manage and educate those assigned to such re-education. Thus, re-education through labour is a rule-based system. The Government emphasizes that all authorities involved in re-education through labour decisions apply a rigorous procedure. Thus, the government in every province, autonomous region, directly administered municipality and large city has a Re-education through Labour Management Committee, composed of officials from the public security organs, the people's government and the labour department. Any individual facing re-education through labour has his case examined by the Re-education Committee closest to his place of residence. Once the Committee decides on re-education, the individual concerned and his family are notified of the reasons for the decision and the duration of the re-education assignment. The individual can appeal within 10 days of notification of the decision; under article 11 of the Administrative Appeals Act, he can appeal to the courts.

25. According to the Government, while the Chinese Constitution guarantees the right to freedom of speech, the press and assembly, Zhou Guoqiang was assigned to re-education through labour not because he held particular opinions, but because his actions disrupted social order and infringed the interests of society. The Government reiterates that the Beijing Municipal Re-education through Labour Committee's decision in the case decided by the Group "is above reproach". The Committee acted in accordance with legal procedure in considering Zhou's case. For the Government, there is no question of "arbitrary detention"; Zhou was released from re-education on 28 January 1998.

26. In its reply to the Group's Opinion No. 6/1999, the Government of Nigeria regrets that it is unable to provide timely information on the case of Niran Malaolu and notes that he "had in fact been released since 1998". His release must be seen in the context of the release of all political prisoners which began in July 1998, the repeal of many objectionable laws, and the

eventual establishment of a democratically elected Government on 29 May 1999. The Government considers that Mr. Malaolu's release constitutes an appropriate remedy.

27. The Government of Egypt, in reaction to the Group's Opinion 10/1999 in the case of Neseem Abdel Malik, recalls that the Egyptian legal system provides for the trial of civilians before military tribunals in certain cases. As the case of the above concerned an act of terrorism, the President of the Republic referred it to a military court, under article 6 of Act No. 52 of 1966. The Department of Public (not military) Prosecutions ordered the preventive detention of the accused before the case was referred to the military court. The decision as to whether the individual concerned should be held in solitary confinement was with the authority that issued the detention order.

28. The Government rejects the allegation that Neseem Abdel Malik was not informed of charges against him, since the Department of Public Prosecutions charged him with bribery and referred him to a military court which, in accordance with the code of procedure applied by such courts, had to inform the defendant of the charges against him. The Government equally dismisses the allegation that defence counsel was not afforded access to the case file; rather, the case was pleaded by several prominent lawyers and all were provided with a copy of the file. Regarding the allegation that the legally prescribed penalty for bribery does not exceed three years, the Government recalls that article 103 of the Criminal Code prescribes hard labour for life as the penalty for bribery, although the court may exceptionally reduce the penalty to a minimum of three years. The military court considered that the defendant did not merit mitigating circumstances.

29. In reaction to the Group's Opinion No. 15/1999 (Mahmoud Mubarak Ahmad), the Government of Egypt notes that Mr. Mubarak Ahmad, a doctor in the governorate of Sohag, is a member of a terrorist organization. According to the Government, Dr. Mubarak Ahmad was previously indicted in connection with criminal case No. 1006/95/2nd precinct Sohag. According to security services sources, Dr. Mubarak Ahmad, in cooperation with others, prepared acts of violence and terrorism. He remains in detention, in accordance with the provisions of Act No. 162 of 1958 (as amended) concerning states of emergency. Dr. Mubarak Ahmad was previously detained and released on several occasions. He was first detained on 23 March 1995, and released on 14 May 1995. His most recent period of detention started on 2 July 1999 and continues. The Government submits that the detention of Dr. Mubarak Ahmad is lawful.

30. In its reply to Opinion No. 18/1999, the Government of Ethiopia notes that the trial of Mr. Bekele and Mr. Deressa is pending before the 3rd Criminal Branch of the Federal High Court, while the case against Moti Biyya is still being investigated. Charges against the defendants were laid under article 32 (1) (a) and (b) and article 252 (1) (a) (of the Criminal Code), for attempting to instigate revolt or armed rebellion against the constitutional order. The co-defendants acted to advance the objectives "of a terrorist organization called Oromo Liberation Front (OLF)" from 1992 to 1997. "[the accused] advanced the terrorist causes of the OLF as board members and shareholders of the company that published the newspaper Urji". According to the Government, they conducted a propaganda campaign by publishing the "terrorist acts and objectives" of the OLF to incite the public to participate in, and cooperate with, acts of the OLF. The Government affirms that the accused are not detained for expressing

their opinions but face trial for violations of the Criminal Code. Accordingly, the Group's Opinion is said to be based on erroneous assumptions and should be reviewed.

31. The Working Group notes that the Government of Ethiopia does not, in reality, contest the facts of the case as submitted by the source, i.e. arrest and detention of the above-named individuals for their activities as publishers of and contributors to the journal "Urji". In the circumstances, the Group finds no justification to review its Opinion No. 18/1999 of 15 September 1999.

32. The Working Group was informed of the release of Mr. Pek Nath Rizal (Opinion No. 48/1994) who was released from prison on 17 December 1999 the Working Group was also informed of the release of person(s) dealt with in Opinions by the Governments of: China (No. 16/1999 - Liu Nianchun, No. 30/1998 - Zhou Guoqiang) and Nigeria (No. 6/1999 - Niran Malaolu). The Group was informed after the adoption of Opinion No. 23/1998 (Huamán Morales v. Peru) that Mr. Huamán Morales had been granted a presidential pardon on 6 June 1998 and released. This information had been made available to the Office of the High Commissioner for Human Rights on 11 June 1998, regrettably, the Group was unaware of it when the Opinion was adopted. It was further informed of the release of A. Cesti Hurtado (No. 18/1997 - Peru), Ngarléjy Yorongar (No. 8/1999 - Chad), Grigorii Pasko (No. 9/1999 - Russian Federation), Khemais Ksila (No. 5/1999 - Tunisia), Xanana Gusmao (No. 12/1999) and Rashid Mesli (No. 20/1999 - Algeria). The Working Group welcomes the release of these individuals.

33. During its visit to Indonesia, the Working Group met with four detained individuals at Cipinang Prison in Jakarta, former members of the old Indonesian Communist Party (PKI) who had been in detention since 1965 or 1971. In consultations with the Indonesian authorities, the Group requested that these individuals, as well as six other long-term prisoners, also members of the former PKI, should benefit from a presidential amnesty and be released. The Working Group welcomes the amnesty of these prisoners on 25 March 1999. Furthermore, on 10 December 1999, the Government amnestied, and dropped criminal charges against, 91 political prisoners detained by previous Governments, including East Timorese prisoners and six members of the People's Radical Party (PRD).

5. Communications giving rise to urgent appeals

34. During the period under review the Working Group transmitted 101 urgent actions to 39 Governments (as well as to the Palestinian Authority) concerning 580 individuals. In conformity with paragraphs 22-24 of its methods of work, the Working Group, without prejudging whether the detention was arbitrary or not, drew the attention of each of the Governments concerned to the specific case as reported and appealed to it to take the necessary measures to ensure that the detained persons' right to life and to physical integrity were respected. When the appeal made reference to the critical state of health of certain persons or to particular circumstances such as failure to execute a court order for release, the Working Group requested the Government concerned to undertake all necessary measures to have them released.

35. During the period under review, urgent appeals were transmitted by the Working Group as follows (the number of persons concerned is given in parentheses): 13 appeals to the Democratic Republic of the Congo (94), 11 appeals to Indonesia (68, plus a generic appeal concerning the situation in East Timor), 10 to Israel (30), 4 to the Syrian Arab Republic (4), 7 to China (34); 4 to the Sudan (38); 4 to Cuba (8), 3 to Mexico (5), 3 to the Federal Republic of Yugoslavia (3); 3 to the Palestinian Authority (11), 3 to Turkey (5), 2 to Bahrain (4), 2 to Colombia (160+); 2 to Nigeria (2), 2 to Peru (2), 2 to Uzbekistan (3), 2 to Yemen (6); 1 to Belarus (1), 1 to Angola (1), 1 to Burkina Faso (6), 1 to Cambodia (2), 1 to Cameroon (33), 1 to Chile (2), 1 to Costa Rica (1), 1 to Egypt (1), 1 to Ethiopia (1), 1 to Guinea (1), 1 to India (2), 1 to the Islamic Republic of Iran (13), 1 to Côte d'Ivoire (2), 1 to Kenya (1), 1 to Lebanon (1), 1 to Liberia (12), 1 to Mauritania (3), 1 to Morocco (2), 1 to Myanmar (4), 1 to Nepal (1), 1 to Rwanda (1), 1 to Saudi Arabia (1); 1 to Viet Nam (1).

36. Of these urgent actions, 56 were appeals issued jointly by the Working Group with other thematic or geographical special rapporteurs. These were addressed to the Governments of Bahrain (2), Belarus (1), Burkina Faso (1), Cameroon (1), China (4), Côte d'Ivoire (1), Cuba (2), the Democratic Republic of the Congo (13), Egypt (1), Guinea (1), Indonesia (6), the Islamic Republic of Iran (1), Israel (8), Mexico (1), Nigeria (1), the Sudan (3), the Syrian Arab Republic (3), Turkey (1), Viet Nam (1) and Yemen (2); two appeals were addressed to the Palestinian authority.

37. The Working Group received replies to the urgent appeals addressed to the Governments of the following countries: Angola, Bahrain, Burkina Faso, China (reply to three actions), Colombia, Côte d'Ivoire, Cuba (reply to one action), Ethiopia, India, Indonesia (reply to one action), the Islamic Republic of Iran, Israel (reply to four actions), Lebanon, Mauritania, Mexico (reply to two urgent actions), Peru (reply to two actions), the Syrian Arab Republic (reply to three actions) and Turkey (reply to two actions). In some cases it was informed, either by the Government or by the source, that the persons concerned had never been detained or that they had been released, in particular in the following countries: Bahrain (information from source and the Government), Burkina Faso (information from the Government), Côte d'Ivoire (information from the Government), Indonesia (in respect of one case - information from the source), Israel (in respect of one case - information from the source), Kenya (information from the source), Mauritania (information from the Government), Mexico (in respect of one case - information from the Government), Nigeria (information from the source), Peru (in respect of one case - information from the Government and the source), the Syrian Arab Republic (in respect of two cases - information from the Government). In other cases (i.e. relating to China, India, Lebanon, the Sudan and Turkey), the Group was assured that the detainees would benefit from fair trial guarantees. The Working Group wishes to thank those Governments which heeded its appeals and took steps to provide it with information on the situation of the persons concerned, and especially the Governments which released those persons. The Group notes, however, that the percentage of Governments replying to its urgent appeals was only 28 per cent, and invites Governments to cooperate under the urgent action procedure.

B. Country missions

1. Visit conducted in 1999 and visits scheduled

38. From 31 January to 12 February 1999, the Working Group visited Indonesia. It notes with satisfaction that the official version of its mission report (E/CN.4/2000/4/Add.2) was made available on the occasion of the opening of the fourth special session of the Commission on Human Rights, convened because of the serious human rights violations committed in East Timor following the referendum of 30 August 1999.

39. In this respect, the Working Group draws the attention of the International Commission of Inquiry, established in accordance with resolution S-4/1 adopted by the Commission at its fourth special session, to paragraphs 48-49 of its mission report relating to the close collaboration and collusion between the Indonesian Armed Forces and the militia which are directly responsible for the atrocities committed against the inhabitants of East Timor and the widespread destruction and devastation of property in East Timor after the referendum. "During its visit to *Rumah Merah* [Red House], the Group was able to inspect the facilities made available to one of these para-military groups ... According to the authorities, the equipment of paramilitary groups ... concerns 'groups of people carefully selected, who are trained by the armed forces and who return ... the arms once the operation has been completed' ... such militia ... operate under conditions that engage State responsibility, notably if they participate in operations [involving] arrests ... The illegal activities of such groups gravely compromise the future ..."

40. The following visits have (or had) been scheduled for the forthcoming year, as well as 2001:

(a) Bahrain. During the fiftieth session of the Sub-Commission on the Promotion and Protection of Human Rights, the Permanent Representative of Bahrain to the United Nations Office at Geneva declared that his Government "has also agreed to extend an invitation to the Working Group on Arbitrary Detention for a preparatory visit to Bahrain, the date of which will be fixed in consultation with the Chairman of the Working Group" (see document E/CN.4/Sub.2/1998/SR.25). Consultations were held between the Group and the Bahraini authorities during the 22nd, 23rd, 24th, 25th and 26th meetings of the session. Initially, the visit was planned for the course of 1999, but it could not be conducted on account of scheduling difficulties of the Bahraini authorities. On 6 July 1999, the Undersecretary of the Ministry of Foreign Affairs of Bahrain addressed a letter to the Vice Chairman of the Group, requesting a deferral of the Group's visit to the year 2001. Following consultations during the fifty-first session of the Sub-Commission and the twenty-fifth session of the Working Group, the Group addressed a letter to the Bahraini authorities, requesting its visit to be scheduled during the year 2000. On 30 November 1999, the Permanent Representative of Bahrain to the United Nations Office at Geneva informed the Chairman of the Group that his Government was not prepared to accede to the Group's request, and reiterated that the Group's visit should not take place until the year 2001. Noting that the Government's position had already caused the cancellation of one visit by the Group in 1999 and that further deferrals of the visit would jeopardize the credibility of the Group's activities, the Chairman, on the Group's behalf, informed the authorities that the Group would decline to visit Bahrain in those circumstances,

(b) Belarus. During the fifty-first session of the Sub-Commission, the Permanent Representative of Belarus to the United Nations Office at Geneva declared that the Government of Belarus would invite the Special Rapporteur on the independence of judges and lawyers and the Working Group on Arbitrary Detention to visit the country, and that at least one of the visits would take place before the fifty-second session of the Sub-Commission. Further to consultations with the authorities of Belarus during the Group's twenty-sixth session, the Group was informed that the Government of Belarus would invite the Special Rapporteur on the independence of judges and lawyers in 2000, and the Working Group in 2001;

(c) Australia. Pursuant to paragraph 4 of Commission resolution 1997/50, the Working Group has initiated consultations with the Permanent Mission of Australia to the United Nations Office at Geneva, with a view to conducting a mission to Australia to examine the issue of administrative custody of asylum-seekers in that country. An agreement in principle for such a visit having been obtained from the Government of Australia, the Group plans to visit Australia during the first half of 2000.

At the time of adoption of the present report, the modalities of these planned visits remained under consideration.

2. Incident linked to previous country visit of the Working Group

Visit to China (document E/CN.4/1998/44/Add.2)

41. In its annual report for 1998 (E/CN.4/1999/63, paras. 21-25), the Working Group described its communications with the Chinese authorities concerning an incident which occurred during its visit to Drapchi Prison, Lhasa, on 11 October 1997. It deplored the fact that the Government of China had not provided it with a reply to specific queries which the Group had addressed to the authorities on 18 September 1998 (para. 25). On 26 May 1999, the Chinese authorities reiterated that the extension of the sentences of the three inmates identified in the Group's correspondence had nothing to do with the interview of Sonam Tsewang (one of the inmates) by the Group. The authorities did not specify the nature of the offences for which the inmates received extended sentences. They affirmed that it was justified to extend their sentences for their new crimes. The Working Group regrets that the Chinese authorities have not acceded to its request for specific information.

3. Follow-up to country visits of the Working Group

42. By resolution 1998/74, the Commission on Human Rights requested those persons responsible for the Commission's thematic mechanisms to keep the Commission informed about the follow-up to all recommendations addressed to Governments in the discharge of their mandates. In response to this request, the Working Group decided, in 1998 (see E/CN.4/1999/63, para. 36), to address a follow-up letter to the Governments of the countries it has visited, together with a copy of the relevant recommendations adopted by the Group and contained in the reports on its country visits. During its twenty-fourth, twenty-fifth and twenty-sixth sessions, the Group discussed the modalities of its follow-up activities. It adopted a

procedure under which it will systematically request the Governments of countries visited by the Group to inform it of initiatives the Governments have taken pursuant to the Group's recommendations.

43. Given its heavy workload, the Working Group has decided to stagger its follow-up activities in respect of those countries it has visited. Priority was given to follow-up on recommendations contained in the reports on the Group's first country visits. Accordingly, on 1 October 1999, a letter was addressed to the Government of Viet Nam, with a request to provide information on such initiatives as the authorities might have taken to give effect to the recommendations contained in the Group's report to the Commission on Human Rights on its visit to Viet Nam (E/CN.4/1995/31/Add.4). On 4 October 1999, letters were addressed to the Governments of Nepal and Bhutan, with a view to obtaining information from the Governments concerned on the implementation of the recommendations contained in the Group's reports on its visits to these countries (E/CN.4/1997/4/Add.2 and E/CN.4/1997/4/Add.3, respectively).

44. In its reply, the Government of Bhutan notes that a draft of the Civil and Criminal Court Procedure Act is about to be submitted to the National Assembly. Detention centres in Bhutan are now maintaining registers specifying particulars such as the date of arrest, date of presentation before a court, etc. Such registers are also maintained in police stations.

45. The Government refers to several sections of the draft Civil and Criminal Court Procedure Act designed to bring procedures governing arrest and detention into line with the international standards relied upon by the Working Group. These include section 161 (no arrests and detentions except in accordance with the Act), section 203 (anyone detained without a warrant must be produced before a court within 24 hours), subsection 199 (1) (following arrest, the police must make attempts to inform the relatives of the detained person as soon as possible), and subsection 203 (1) (requirement of written reasons if the detainee cannot be produced before the court within the scheduled time). The draft Act also contains sections on bail (subsects. 216.1 and 217.1); sentencing (subsects. 225 (1) and (2)); credit for time spent in detention prior to the sentence (sect. 227); disposition of juvenile offenders (subsects. 231 (1), (2), (3) and (4)); and above all, habeas corpus (sect. 232).

46. The Government recalls the technical cooperation agreement with the Office of the High Commissioner for Human Rights signed in 1996. Most of the activities envisaged under the programme have been implemented, in keeping with the recommendations of the Working Group. Finally, the Government notes that under the draft Civil and Criminal Court Procedure Act, several provisions (sect. 99, subsect. 66 (2), subsect. 200 (1), subsect. 168 (3)) guarantee the entitlement of the accused or a juvenile offender to a jabmi of his choice.

47. The Group welcomes the reply of the Government of Bhutan, which corresponds to the recommendations the Group made after its follow-up visit to Bhutan in 1996. It regrets that the Governments of Viet Nam and Nepal have not yet replied to the Group's request for information and urges them to do so at their earliest convenience.

Follow-up information received from the Government of China

48. On 13 September 1999, the Government of China forwarded its comments on the recommendations contained in the Group's report on its visit to China. The Government observes that the 1982 Constitution was amended in March 1999 to incorporate an article which enshrines the principle of "governing the country according to law". The revisions of the Code of Criminal Procedure in 1996 and 1997, designed to enhance protection of human rights, incorporated the principle of presumption of innocence into the Code.

49. The Criminal Code of 1979 was amended in response to concerns over its sweeping and ambiguous nature. Thus, the provision on "counter-revolutionary crime" was amended to cover the crime of "endangering national security". This reduces the number of punishable activities from 21 to 12, and the activities deemed to endanger national security are specifically and clearly defined. Thus, in respect of the crime of treason (art. 102), the ambiguous notion of "conspiring" was deleted from the original provision of "colluding with foreign powers and conspiring to endanger national security, territorial integrity and security". Finally, specific sentences govern convictions for endangering national security; sentences were reduced compared with the previous version of the Code. Capital punishment will only be applied in exceptionally serious cases. These amendments are conducive to the implementation of the principle of punishment commensurate with the crime.

50. The Government recalls that the 1982 Constitution and other laws guarantee civil and political rights. Thus, the Constitution protects the right to participate in elections and to be elected, and the rights to freedom of expression, publication, association, assembly, demonstration and protest (art. 35). But while protecting the aforementioned citizens' rights, the Constitution also stipulates that the exercise of these rights by the citizens must not cause harm to the State or to social and collective interests, nor infringe on the rights of other citizens, and all acts in violation of the Constitution and the law will be punished.

51. With respect to the system of re-education through labour, the Government recalls:

(a) Re-education through labour does not constitute criminal punishment but rather a "compulsory measure of education and reform for those persons who have committed minor offences". The system was established to address the specific situation of China and is designed to alleviate the trial burden of the courts;

(b) Who will be assigned to re-education through labour is decided by the Re-education through Labour Committees. In most instances, the term of re-education is one year. If those assigned to re-education through labour disagree with the decision, they may appeal and request reconsideration of the decision;

(c) There is sufficient legal supervision of the re-education through labour system to prevent its misuse and guarantee its impartiality. In examining re-education through labour cases, the committees must follow strict legal procedures;

(d) While there is currently no independent tribunal for the re-education through labour system, individuals affected by decisions of Re-education through Labour Committees

can appeal to the administrative courts and can be legally represented at the proceedings (in accordance with the Administrative Procedure Law). The possibility of judicial review is said to ensure the impartiality of the system and the correctness of the decision on re-education;

(e) Finally, with the progress of judicial reforms in China, a "heated discussion" has begun among lawyers and in academic circles as to how the re-education through labour system can be further improved. The Government considers the Working Group's recommendations to be helpful in this discussion. In this particular context, the Working Group wishes to reiterate its position that the Chinese authorities should "establish a permanent independent tribunal for or associate a judge with all proceedings under which the authorities may commit a person to re-education through labour, in order to obviate the possibility of any criticism that the present procedure is not entirely in conformity with international standards for a fair trial as reflected in international legal instruments ..." (E/CN.4/1998/Add.2, para. 109 (d)).

52. The Working Group expresses its appreciation for the cooperation of the Government of China and notes the contents of the Government's reply. It encourages the Government of China to continue studying the recommendations of the Group and to keep it informed of developments, in particular with respect to the issue of re-education through labour.

II. COOPERATION WITH THE COMMISSION ON HUMAN RIGHTS

53. In various resolutions adopted at its fifty-fifth session, the Commission on Human Rights made requests and provided guidance to the Working Group.

Resolution 1999/37, "Question of arbitrary detention"

54. The Group has sought at all times, as requested by the Commission, to avoid duplication of effort with other mechanisms of the Commission but, with a view to improved coordination, it has nevertheless informed bodies holding other mandates of cases brought before it where this enables the latter to intervene. On 56 occasions, the Group pursued urgent actions jointly with other mechanisms.

55. Concerning the release of individuals who, in the Group's opinion, were arbitrarily detained, please refer to paragraph 30. In eight other cases, the Governments responded favourably to the urgent actions proposed by the Group: L.B. Kombolo (Democratic Republic of the Congo); Hassan Sa'ad Arabid and Bassam Sa'ad Arabid (Israel); Nyak Wan (Indonesia); Shaikh Al-Jamri (Bahrain); Maria Milagros Monroy Millano (Peru); Tony Gachoka (Kenya); Jerry Needam (Nigeria); and Raphael Lakpe and Jean Khalil Silla (Côte d'Ivoire).

56. The Group wishes to express its concern about the fact that the assistance provided to it by the Secretary-General has been limited to only one Professional with excellent knowledge of the subject-matter of its mandate. This Professional has, moreover, been assigned to other duties, whose importance the Group does not doubt, but this has occasioned difficulties in the discharge of its mandate. The Group asks the Commission, in the resolution that it will adopt at its fifty-sixth session, to request more Professional assistance on an ongoing basis.

Resolution 1999/16, "Cooperation with representatives of United Nations human rights bodies"

57. The Group examined the situation of Makelele Kabunda, in the Democratic Republic of the Congo, who was deprived of liberty because of his cooperation with a mechanism of the Commission. The case was transmitted to the Secretary-General for the report to be prepared, at the request of the Commission, in accordance with paragraph 6 of resolution 1999/16.

Resolution 1999/34, "Impunity"

58. The Group shares the views of the Commission on Human Rights concerning the need to put an end to impunity for the most serious human rights violations. In this connection, it welcomes the fact that some of the most significant perpetrators of human rights violations are being prosecuted in the competent courts either in their own country or in other countries.

59. The Group was furthermore informed of the alleged arbitrary detention of four staff members of the Professional Training Institute, who had been held on 28 January in Medellin, Colombia, by a paramilitary organization, and who were fortunately released. An examination of the background led the Group to the conclusion that this was a case of hostage-taking and not of arbitrary detention, and it therefore falls within the ambit of Commission resolution 1999/29, which urged all special rapporteurs and working groups to continue to address the human rights consequences of acts of hostage-taking, which are justifiably described as "abhorrent practices". This situation is all the more alarming since the victims are human rights activists. In its Opinion No. 25/1999 the Group points out that its mandate is to investigate cases of arbitrary detention by States, but nevertheless does not include deciding on offences of abduction arising from hostage-taking. In the Opinion it calls on the State of Colombia to undertake a judicial investigation of the incidents.

Resolution 1999/41, "Integrating the human rights of women throughout the United Nations system"

60. Of the cases handled by the Group at its twenty-third to twenty-sixth sessions, only three relate to women. In none of these cases, however, is gender the primary or secondary reason for the deprivation of liberty (as referred to in resolution 1999/42). For a number of years the Group has been incorporating the gender perspective in its reports, especially for statistical purposes, as requested by the Commission in paragraph 14 of the resolution.

Resolution 1999/42, "Elimination of violence against women"

61. The Group was apprised of the fate of five women in Yemen who were detained in connection with incidents involving domestic issues and violence; it was alleged that those women were subjected to longer punishment than men in similar situations, especially if charged with "moral" crimes (such as adultery), and that some of them were detained beyond the completion of their sentences. Some of the women were alleged to have been sentenced to flogging. An urgent appeal was sent to the Government of Yemen on their behalf, together with the Special Rapporteur on violence against women.

Resolution 1999/48, "Rights of persons belonging to national or ethnic, religious and linguistic minorities"

62. The Group was informed of the detention of persons who had acted in defence of ethnic minorities (José Olo Obono, in Equatorial Guinea (Opinion No. 22/1999)) and of activists claiming the right to autonomy and self-determination of the minorities to which they belong (in Indonesia (Opinion No. 11/1999) and in Ethiopia (Opinion No. 18/1999)), all of these cases were considered by the Group to be arbitrary.

63. In its report on the mission to Indonesia, the Group indicates that it learnt of other cases of deprivation of liberty arising from claims for recognition of the rights of minorities. They concerned persons detained in 1998 for having symbolically raised flags representing the minorities in Wamena, Jayapura, on the island of Biok and in Sorong (Irian Jaya). All of these arrests were considered to be arbitrary by the Group, as falling within category II.

Resolution 1999/73, "Mainstreaming technical cooperation in all areas of human rights"

64. The resolution declares that advisory services and technical cooperation provided at the request of Governments constitute effective means of promoting and protecting human rights, democracy and the rule of law. The Group believes that such services must be provided to countries which have made significant efforts to put an end to systematic human rights violations and show, through the implementation of serious and effective domestic measures, that they have put in place policies to guarantee the effective enjoyment of human rights and fundamental freedoms by their peoples. Such services must, in the Group's view, include both State institutions and organizations that are most representative of civil society in the field of human rights; the Group welcomes progress made in this respect.

III. CONCLUSIONS AND RECOMMENDATIONS

Conclusions

65. The Group wishes to draw attention to the lack of protection for human rights defenders. It has recently become common for lawyers defending victims of human rights violations, as well as other persons dedicated to the promotion and protection of fundamental rights, to become, together with journalists and politicians, prime targets for repressive measures. The Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, adopted by consensus by the General Assembly of the United Nations on 9 December 1998, contains various statements concerning the protection which is necessary for those who devote themselves to the protection of others.

66. The Group regrets that persons dedicated to this noble cause should so often be victims of reprisals. During the past year it was apprised of the cases of José Olo Obono, of Equatorial Guinea (arbitrary detention, category II); of Khemais Ksila, of Tunisia (category II), and of Ngarlèjy Yorongar, of Chad (no opinion was issued because the person in question was

released). The Group is concerned about the fact that attempts have been made in such cases to justify deprivation of liberty on the basis of domestic laws incompatible with the international human rights instruments.

67. Once again, the Group feels bound to denounce the excesses of military justice, a regular cause of arbitrary detention and impunity for human rights violations. In 1999 the Group took note of the situation of 116 members of the Bubi tribe, in Equatorial Guinea, who had been tried summarily by a military court. The defence lawyer, Jose Olo Obono, was himself imprisoned. It also examined the case of Neseem Abdel Malik (Egypt), whose deprivation of liberty was found to be arbitrary (category III), and the case of 26 Sudanese citizens, whose detention was found to be arbitrary (categories II and III), as was the case of O.M. Ulke (Turkey, category III).

68. The Group therefore urges, in the recommendation contained in paragraphs 79 and 80 of its annual report for 1998, in paragraphs 176 and 178 to 180 of the report on the visit to Peru, and in paragraphs 98 and 103 of the report on the visit to Indonesia, the holding of a conference, if necessary at intergovernmental level, with a view to the promotion of agreements to limit the actual powers of the military justice system.

Recommendations

69. The Group's first recommendation concerns human rights defenders. The cases referred to above show that human rights defenders are frequently at serious risk. The Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, of 9 December 1998, should be implemented by all States so as to demonstrate a real and sincere commitment to respect for human rights. Laws contrary to this Declaration, insofar as they negate its precepts, add to the risks facing human rights defenders and are not consonant with the incontrovertible fact that the Declaration was adopted by consensus.

70. Furthermore, the Group recommends that States should make moderate use, in strict accordance with article 4 of the International Covenant on Civil and Political Rights, of so-called states of emergency. The Group once again notes abuses of this measure, such as the arrest of Ahmad Mubarak (Egypt, Opinion No. 15/1999) and the arrests and other restrictions on the freedom of movement of 13 citizens of Myanmar (Opinion No. 3/1999), which were considered to be arbitrary (categories II and III of the principles for the analysis of cases brought before the Group).

Annex I

STATISTICS

(Covering the period January-December 1999. Figures in parentheses are corresponding figures from last year's report.)

A. Cases of detention in which the Working Group adopted an opinion regarding their arbitrary or not arbitrary character

1. Cases of detention declared arbitrary

	Female	Male	Total
Cases of detention declared arbitrary falling within category I	0 (0)	0 (12)	0 (12)
Cases of detention declared arbitrary falling within category II	0 (1)	32 (14)	32 (15)
Cases of detention declared arbitrary falling within category III	0 (4)	14 (28)	14 (32)
Cases of detention declared arbitrary falling within categories II and III	0 (0)	27 (1)	27 (1)
Cases of detention declared arbitrary falling within categories I and II	0 (0)	0 (1)	0 (1)
Cases of detention declared arbitrary falling within categories I and III	0 (0)	26 (0)	26 (0)
Total number of cases of detention declared arbitrary	0 (5)	99 (56)	99 (61)

2. Cases of detention declared not arbitrary

Female	Male	Total
0 (0)	8 (0)	8 (0)

B. Cases which the Working Group decided to file

	Female	Male	Total
Cases filed because the person was released, or was not detained	2 (3)	5 (10)	7 (13)
Cases filed because of insufficient information	0 (2)	0 (16)	0 (18)

C. Cases pending

	Female	Male	Total
Cases which the Working Group decided to keep pending for further information	0 (3)	1 (7)	1 (10)
Cases transmitted to Governments on which the Working Group has not yet adopted an opinion	13 (10)	169 (103)	182 (113)
Total number of cases dealt with by the Working Group during the period January-December 1999	15 (23)	282 (192)	297 (215)

D. Case of alleged detention transferred by the Working Group to other human rights mechanisms

Female	Male	Total
0 (0)	6 (1)	6 (1)

Annex II

Deliberation No 5

Situation regarding immigrants and asylum-seekers

By resolution 1997/50, the Working Group was requested by the Commission to devote all necessary attention to reports concerning the situation of immigrants and asylum-seekers who are allegedly being held in prolonged administrative custody without the possibility of administrative or judicial remedy

In the light of the experience gained from its missions carried out in this framework, the Working Group took the initiative to develop criteria for determining whether or not the deprivation of liberty of asylum seekers and immigrants may be arbitrary

After consultation, in particular with the Office of the United Nations High Commissioner for Refugees, the Working Group, in order to determine whether the above situations of administrative detentions were of an arbitrary nature, adopted the following deliberation

Deliberation No 5

For the purposes of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment

- The term "a judicial or other authority" means a judicial or other authority which is duly empowered by law and has a status and length of mandate affording sufficient guarantees of competence, impartiality and independence

- House arrest under the conditions set forth in deliberation No 1 of the Working Group (E/CN 4/1993/24, para 20) and confinement on board a ship, aircraft, road vehicle or train are assimilated with custody of immigrants and asylum-seekers

- The places of deprivation of liberty concerned by the present principles may be places of custody situated in border areas, on police premises, premises under the authority of a prison administration, ad hoc centres ("centres de rétention"), so called "international" or "transit" zones in ports or international airports, gathering centres or certain hospital premises (see E/CN 4/1998/44, paras 28-41)

In order to determine the arbitrary character of the custody, the Working Group considers whether or not the alien is enabled to enjoy all or some of the following guarantees

I. GUARANTEES CONCERNING PERSONS HELD IN CUSTODY

Principle 1: Any asylum-seeker or immigrant, when held for questioning at the border, or inside national territory in the case of illegal entry, must be informed at least orally, and in a language which he or she understands, of the nature of and grounds for the decision refusing entry at the border, or permission for temporary residence in the territory, that is being contemplated with respect to the person concerned.

Principle 2: Any asylum-seeker or immigrant must have the possibility, while in custody, of communicating with the outside world, including by telephone, fax or electronic mail, and of contacting a lawyer, a consular representative and relatives.

Principle 3: Any asylum-seeker or immigrant placed in custody must be brought promptly before a judicial or other authority.

Principle 4: Any asylum-seeker or immigrant, when placed in custody, must enter his or her signature in a register which is numbered and bound, or affords equivalent guarantees, indicating the person's identity, the grounds for the custody and the competent authority which decided on the measure, as well as the time and date of admission into and release from custody.

Principle 5: Any asylum-seeker or immigrant, upon admission to a centre for custody, must be informed of the internal regulations and, where appropriate, of the applicable disciplinary rules and any possibility of his or her being held incommunicado, as well as of the guarantees accompanying such a measure.

II. GUARANTEES CONCERNING DETENTION

Principle 6: The decision must be taken by a duly empowered authority with a sufficient level of responsibility and must be founded on criteria of legality established by the law.

Principle 7: A maximum period should be set by law and the custody may in no case be unlimited or of excessive length.

Principle 8: Notification of the custodial measure must be given in writing, in a language understood by the asylum-seeker or immigrant, stating the grounds for the measure; it shall set out the conditions under which the asylum-seeker or immigrant must be able to apply for a remedy to a judicial authority, which shall decide promptly on the lawfulness of the measure and, where appropriate, order the release of the person concerned.

Principle 9: Custody must be effected in a public establishment specifically intended for this purpose; when, for practical reasons, this is not the case, the asylum-seeker or immigrant must be placed in premises separate from those for persons imprisoned under criminal law.

Principle 10: The Office of the United Nations High Commissioner for Refugees (UNHCR), the International Committee of the Red Cross (ICRC) and, where appropriate, duly authorized non-governmental organizations must be allowed access to the places of custody.